

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

ORDER NO. 96-108

ORDER SETTING ADMINISTRATIVE CIVIL LIABILITY FOR:

**EAST CHARLESTON, INC.**

for the property located at

**844 EAST CHARLESTON ROAD  
PALO ALTO  
SANTA CLARA COUNTY**

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter called the Board), finds that:

1. High levels of VOC's have been detected in site soils including TCE up to 7,000 ppb, DCE up to 630 ppb, and Methylene Chloride up to 5,500 ppb. Nine monitoring wells have been installed and VOC's were detected in the groundwater including TCE up to 7,600 ppb, DCE up to 3,800 ppb, and DCA up to 330 ppb. Groundwater monitoring also showed that the second aquifer has been affected.
2. Property transfer records indicate that East Charleston, Inc. purchased that property in April 1995. East Charleston, Inc. did not cause the discharge but as the new property owner qualifies as a discharger under current law and Board policy.
3. The Regional Board staff adopted Site Cleanup Order (SCR) No. 95-222 on November 15, 1995. The Order names East Charleston, Inc. as a discharger. The SCR included tasks for soil and groundwater investigations at the site. Task B.1, submittal of a Remedial Investigation Workplan, was due January 15, 1996.
4. On February 8, 1996, the Regional Board Executive Officer issued a notice of violation to East Charleston, Inc. for failure to submit the workplan.
5. East Charleston, Inc. is alleged to have violated a cleanup and abatement order pursuant to Section 13304 of the California Water Code, by failing to submit a work plan as required under Site Cleanup Order No. 95-222.
6. As of the date of this Order, East Charleston, Inc. has been in violation for 182 days from January 15, 1996 to July 17, 1996.

7. The Board has fully considered the factors set forth for determination of the amount of civil liability set forth in the California Water Code Section 13327:
  - a. Water Quality and Public Health Effects: Pollutants released at the site are volatile organic compounds (VOCs), including some known or suspected carcinogens. VOCs have impacted both soils and groundwater beneath the site and have migrated off-site and polluted additional groundwater resources. Off-site migration has impacted the cleanup program at the adjacent former Ford Aerospace site located immediately downgradient of the subject property. East Charleston, Inc.'s violation has allowed continued significant migration of pollutants in soil and groundwater.
  - b. Culpability: East Charleston, Inc. is fully aware of its violation of SCR Task B.1, based on the SCR language itself, plus the Executive Officer's February 8, 1996 notice of violation letter.
  - c. Prior History of Violations: East Charleston Inc. has no history of prior violations. However, the January 15, 1996 submittal date was its first opportunity to comply with the SCR and it has given no indication that it intends to comply with any of the other SCR tasks.
  - d. Economic Savings: East Charleston, Inc has realized cost savings by delaying submittal of the workplan and conducting a remedial investigation. The cost savings for not implementing site characterization alone exceeds several thousands of dollars, not to mention the savings by not implementing cleanup of soil and groundwater.
  - e. Voluntary Cleanup Efforts: This factor does not apply to the violation at hand.
  - f. Ability to Pay: East Charleston, Inc. has provided no evidence of its inability to pay the proposed liability. East Charleston, Inc. has at a minimum the cash flow from the lease of the subject property.
  - g. Other Matters as Justice May Require: The Board incurred \$2400 in staff costs in order to prepare the complaint and supporting information. This amount is computed based on an hourly rate of \$60 per hour for 40 hours.
8. The maximum civil liability which can be imposed by the Regional Board under Section 13350 of the California Water Code is \$5,000 per day of violation for the 182 day period from January 15, 1996 through July 17, 1996.

9. California Water Code Section 13350(d) also establishes a minimum administrative civil liability of \$500 per day of violation. The Board must provide a specific rationale if it imposes civil liability based on a lower rate. In this instance, East Charleston, Inc. will pay less than \$500 per day if it complies with the conditions for suspension of liability. A lower rate is appropriate for the following reasons: (i) East Charleston, Inc. must perform substantial work to qualify for suspension of liability, (ii) a lower rate will still take away the cost saving associated with its violation, and (iii) a \$500 per day rate (after suspension of liability) would threaten East Charleston's ability to comply with SCR requirements.
10. This action is an order to enforce the laws and regulations administered by the Board. This action is categorically exempt from the provisions of CEQA pursuant to Section 15321 of the Resources Agency Guidelines.
11. The Board has notified East Charleston, Inc. and all interested agencies and persons that it would hold a public meeting on this matter and has provided them with an opportunity to submit written comments.
12. The Board, at a public meeting, heard and considered all comments pertaining to this discharge.

IT IS HEREBY ORDERED, PURSUANT TO CALIFORNIA WATER CODE SECTION 13350(d), that East Charleston, Inc. is civilly liable for this violation and shall pay administrative civil liability in the amount of \$184,400. This amount was calculated using a liability of \$1000/violation day for 182 violation days and \$2400 for recovery of staff costs. \$36,880 of this liability shall be paid to the State Water Pollution Cleanup and Abatement Account within 30 days of the date of this Order

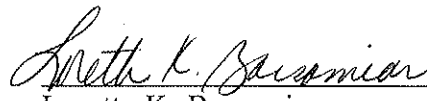
The following amounts shall be suspended from the total liability if the following tasks are completed according to the dates shown below.

| Task   | Due date     | Reduction |
|--|--------------|-----------|
| a. Comply with Task 1 of SCR Order 95-222<br>Submit satisfactory remedial investigation workplan | Aug 15, 1996 | \$46,100  |
| b. Comply with Task 2 of SCR Order 95-222<br>Submit satisfactory remedial investigation report   | June 1, 1997 | \$101,420 |

If a task cannot be accomplished due to circumstances beyond the reasonable control of the discharger, the Board may consider amending this Order.

Any remaining liability, if not suspended as described herein, shall be paid to the State Water Pollution and Abatement Account within 30 days of the date of a demand letter requesting payment issued by the Executive Officer.

I, Loretta K. Barsamian, Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of an order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on July 17, 1996.

  
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Loretta K. Barsamian  
Executive Officer